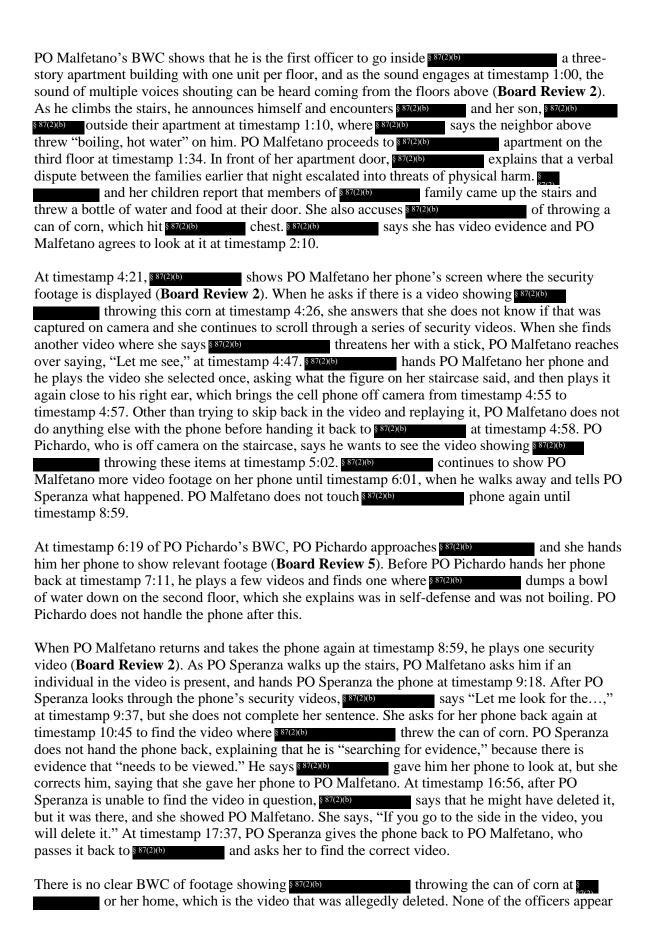
CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:		CCRB Case #:	☑	Force		Discourt.		U.S.
Nicholas Venduras		Squad #1	6	202203603	V	Abuse		O.L.		Injury
Incident Date(s)		Location	of Incident:	-		18 N	Io. S	OL	Pr	ecinct:
Saturday, 06/04/2022 10:56 PM		§ 87(2)(b)				12/	4/202	3		40
Date/Time CV Reported		CV Repo	rted At:	How CV Reported:		Date/Tim	e Rec	eived at CC	RB	
Sun, 06/05/2022 2:32 AM		CCRB		Call Processing System		Sun, 06/0	5/202	2 2:32 AM		
Complainant/Victim	Type		Home Addı	ess						
Witness(es)			Home Addı	ess					_	
Subject Officer(s)	Shield		TaxID	Command						
1. PO Luke Speranza	11812		965879	052 DET						
2. An officer										
3. PO Brett Malfetano	14275		966183	040 PCT						
4. PO Shamil Flores	16190		971438	040 PCT						
5. PO Jose Pichardo	23992		967256	040 PCT						
6. PO Ernst Celestin	28671		966991	040 PCT						
7. PO Jonathan Torres	20300		971706	040 PCT						
Officer(s)	Allegati	on				Inv	estiga	tor Recon	nmen	dation
A. An officer	Abuse: A		deleted infor	mation on § 87(2)(b)						
B.PO Luke Speranza	Abuse: F	olice Offi	cer Luke Spe	eranza searched § 87(2)(6))					
C.PO Jose Pichardo	recording device. Abuse: Police Officer Jose Pichardo entered [\$87(2)(6)] in the Bronx.									
D.PO Jose Pichardo	Abuse: Police Officer Jose Pichardo threatened to arrest									
E.PO Jonathan Torres	Abuse: Police Officer Jonathan Torres entered (\$87(2)(6)) in the Bronx.									
F.PO Brett Malfetano	Abuse: Police Officer Brett Malfetano entered in the Bronx.									
G.PO Ernst Celestin	Abuse: F		cer Ernst Cel the Bronx.	estin entered § 87(2)(6)						
H.PO Luke Speranza	Abuse: F		cer Luke Spe the Bronx.	eranza entered § 87(2)(b)						
I.PO Brett Malfetano	Force: Po	olice Offic 87(2)(6)	er Brett Mal	fetano used physical f	forc	e				

Officer(s)	Allegation	Investigator Recommendation
J.PO Ernst Celestin	Abuse: Police Officer Ernst Celestin threatened to arrest \$87(2)(6)	
K.PO Ernst Celestin	Abuse: Police Officer Ernst Celestin threatened to arrest § 87(2)(b)	
L.PO Shamil Flores	Abuse: Police Officer Shamil Flores entered in the Bronx.	

Case Summary

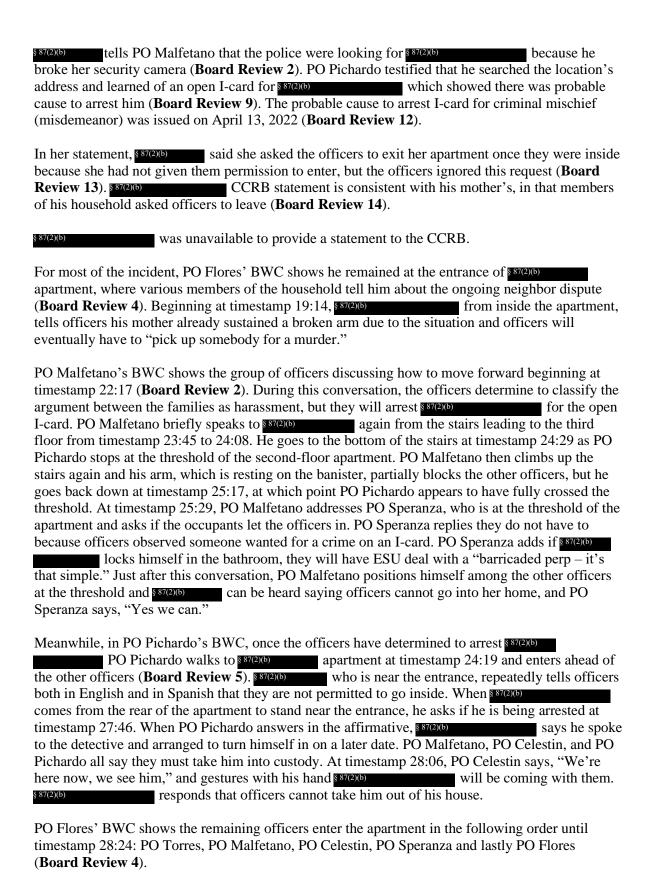
On June 5, 2022, \$3(2)(b) filed this complaint via the CCRB call processing system. On June 4, 2022, at approximately 10:56 PM, Police Officer Brett Malfetano, Police Officer Jose Pichardo, Police Officer Luke Speranza, Police Officer Ernst Celestin, Police Officer Jonathan Torres, and Police Officer Shamil Flores from the 40th Precinct went to \$87(2)(b) the Bronx in response to a 911 call regarding an ongoing neighbor dispute. While investigating allegations that second- and third-floor residents threw items at each other, the third-floor showed PO Malfetano and PO Pichardo security footage on her phone. An officer allegedly deleted relevant footage from \$87(2)(b) phone (Allegation A: Abuse of Authority, § 87(2)(g) When § 87(2)(b) asked for her phone back, PO Speranza continued to review other videos (Allegation B: Abuse of Authority, \$87(2)(g) While investigating the dispute, officers learned that there was an active I-card with probable cause to arrest § 87(2)(b) son, $\S 87(2)(b)$ PO Pichardo entered § 87(2)(b) apartment (Allegation C: Abuse of Authority, \$87(2)(g) After arguing about the validity of the arrest with \$37(2)(b) PO Pichardo threatened to arrest her (Allegation D: Abuse of PO Torres then entered the apartment, followed by PO Authority, § 87(2)(g) Malfetano, PO Celestin, and PO Speranza (Allegations E to H: Abuse of Authority, As § 87(2)(b) blocked PO Malfetano's path, he guided her out of his way (Allegation I: Force, § 87(2)(g) PO Celestin then threatened to arrest § 87(2)(b) (Allegation J: Abuse of Authority, § 87(2)(g) PO Celestin also allegedly threatened to arrest another second-floor resident (Allegation K: Abuse of Authority, PO Flores was the last officer to enter the apartment (Allegation L: Abuse of Authority, § 87(2)(g) was arrested on an open I-card and charged with criminal mischief for previously damaging § 87(2)(b) property (**Board Review 1**). This case was originally assigned to former Supervising Investigator Rachel Murgo and was reassigned to Investigator Nick Venduras on June 28, 2023, upon her departure from the agency. The NYPD Legal Department provided six Body Worn Camera (BWC) videos in regard to this case (Board Review 2 to Board Review 7). The investigation is not in possession of additional video. **Findings and Recommendations** Allegation (A) Abuse of Authority: An officer deleted information on §87(2)(6) electronic device. Allegation (B) Abuse of Authority: Police Officer Luke Speranza searched recording device. It is undisputed that the officers listed above responded to §87(2)(b) in the Bronx over an ongoing dispute between neighbors on the second and third floors. Each officer present recorded the entire incident on BWC (Board Review 2 to Board Review 7).



to delete data from § \$7(2)(6) phone.
Both PO Malfetano and PO Pichardo said as they looked at serono phone with her permission, they did not do anything that could have deleted any footage (Board Review 8 & Board Review 9).
PO Speranza said he also believed he had permission to look at strong phone; however, he acknowledged that he did not give it back to her when she asked for it (Board Review 10). He explained in his interview that there was additional evidence on the phone he wanted to see to get a complete understanding of the incident. He also said he did not do anything that would have deleted anything on her phone.
The investigation was able to make a determination without interviewing \$87(2)(6)
phone. Additionally, strong initially told the officers that the security cameras may not have captured strong throwing the can of corn.
Per <i>People v Weissman</i> , 46 Misc. 3d 171, 997 N.Y.S.2d 602 (2014), the United States Supreme Court has repeatedly held that a search conducted without a warrant is unreasonable and subject only to a "few specifically established and well-delineated exceptions," such as voluntary consent to search, exigent circumstances that pose an immediate threat to life or evidence, and search-incident-to lawful arrest (Board Review 11).
PO Speranza never obtained consent to search sarch phone for additional surveillance footage and when asked for her phone back, this showed that she withdrew her initial consent for officers to look at the video on the phone.
§ 87(2)(g)
Allegation (C) Abuse of Authority: Police Officer Jose Pichardo entered in the Bronx. Allegation (E) Abuse of Authority: Police Officer Jonathan Torres entered
in the Bronx. Allegation (F) Abuse of Authority: Police Officer Brett Malfetano entered
in the Bronx. Allegation (G) Abuse of Authority: Police Officer Ernst Celestin entered in the Bronx.
in the Bronx. Allegation (H) Abuse of Authority: Police Officer Luke Speranza entered in the Bronx.
in the Bronx. Allegation (L) Abuse of Authority: Police Officer Shamil Flores entered
in the Bronx. It is undisputed that at the time of the incident, \$\sqrt{87000}\$ was wanted on an I-card and officers arrested him inside his apartment. At timestamp 2:55 of PO Malfetano's BWC, \$\sqrt{8700}\$

CCRB Case # 202203603

CCRB CTS – Confidential Page 3



All BWC videos are consistent with one another and at no point does any video show any second-floor occupant giving consent to enter the apartment to officers (**Board Review 2 to Board Review 7**).

None of the officers interviewed said they asked for permission to enter the unit, they did not hear any other officer ask for permission, nor did they ever receive such permission from any occupant of that apartment (Board Review 8 to Board Review 10 & Board Review 15 to Board Review 17).

PO Pichardo explained that while an I-card does not allow officers to enter an apartment to arrest an individual, it was appropriate in this situation because they had seen \$87(2)(6) through the door which remained open the whole time and officers were there responding to a job (**Board Review 9**).

In his CCRB testimony, PO Torres stated the I-card with probable cause to arrest alone provided the officers the right to enter the unit (**Board Review 16**). He provided no other reasons for entering the location.

PO Malfetano said he understood that I-cards do not allow officers to enter a home, where arrest warrants, which are signed by judges, allowed officers to enter an apartment for an arrest (**Board Review 8**). He believed officers had been given permission to enter the unit because after he went upstairs, he saw his fellow officers at the threshold and then enter the apartment. He initially said he went inside the apartment because other officers had already gone in, but he did not know how they gained entry to the apartment. After reviewing his BWC, he said he asked PO Speranza if they had permission to enter, but because other officers were already inside, he did not stop their actions as he assumed they had permission.

PO Celestin, like PO Pichardo, understood I-cards alone do not allow officers to enter an apartment to make an arrest; however, he considered seeing through the open door and the "chaotic nature" of the incident to be exigent circumstances that would give them permission to do so (**Board Review 15**). PO Celestin considered the scene chaotic because the residents from the different apartments were all yelling at each other at once.

In his CCRB statement, PO Speranza stated that not only was there an I-card, but a wanted flier out for \$87(2)(b) arrest as well; however he did not recall seeing either one (**Board Review 10**). A wanted flier, which can be distributed to the public, other law enforcement agencies, and the news media, would have the suspect's picture with a brief description of the crime, the case number, and the number for the command investigating the crime. He believed officers were allowed to enter the apartment based on the I-card, wanted flier, and having seen \$87(2)(b)

While PO Flores said an I-card would not allow an officer into an apartment on its own, he considered strip talk of someone being murdered, strip concerns for her safety, and the open door to the second floor unit to be sufficient exigent circumstances to allow them to enter to make the arrest (**Board Review 17**). He said if officers left and the situation escalated to violence, the officers would not have done their job. Additionally, an officer cannot just "let go of an I-card," so they were compelled to arrest strip.

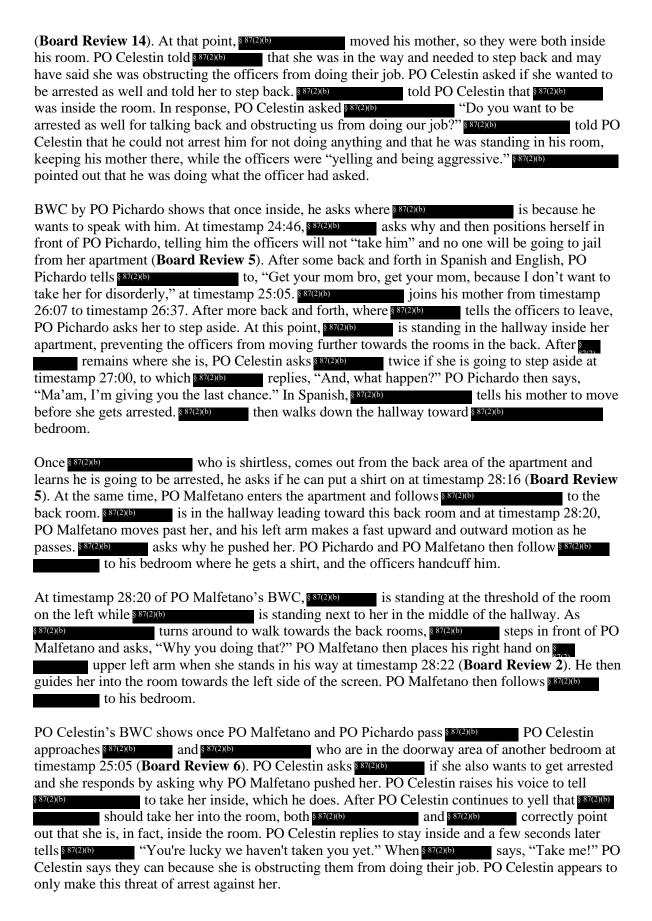
None of the officers testified they suspected \$87(2)(b) of being armed (Board Review 8 to Board Review 10 & Board Review 15 to Board Review 17).

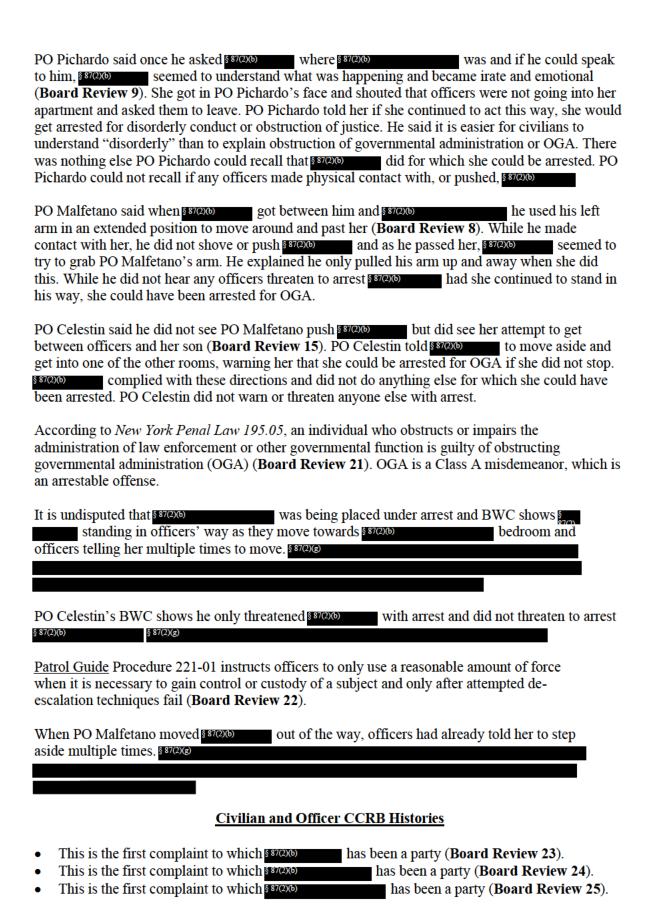
New York Penal Law Section 145.00 defines criminal mischief, a class A misdemeanor, as, but not limited to, recklessly damaging property of another person in an amount exceeding two hundred fifty dollars (**Board Review 18**).

According to *Payton v. New York*, 445 U.S. 573, warrantless entries are prohibited under the Fourth Amendment (**Board Review 19**). One of the exceptions allowing for a warrantless entry to an apartment is the presence of exigent circumstances as outlined by *People v McBride*, 14 N.Y.3d 440, which states the following factors must be considered: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry" (**Board Review 20**).

These officers did not have a warrant to enter this apartment, only an I-card; § 87(2)(g)
Celestin and PO Flores claiming that exigent circumstances existed, as BWC shows, these circumstances were not present. Str(2)(6) charge was a misdemeanor offense for criminal mischief, there was no mention that the officers believed he was armed, and he told the officers that he was already in communications with the detective assigned to the case. Str(2)(c)
§ 87(2)(g)
Allegation (D) Abuse of Authority: Police Officer Jose Pichardo threatened to arrest [87/2]
Allegation (I) Force: Police Officer Brett Malfetano used physical force against Allegation (J) Abuse of Authority: Police Officer Ernst Celestin threatened to arrest [87(2)(5)]
Allegation (K) Abuse of Authority: Police Officer Ernst Celestin threatened to arrest 887(2)(5)
said PO Malfetano pushed her with both hands as officers entered her apartment (Board Review 13). At the time, § \$7(2)(6) was standing in the hallway of her apartment, and the
door was open. \$\sin^{2/(b)}\$ almost fell, and \$\sin^{2/(b)}\$ grabbed \$\sin^{2/(b)}\$ and pushed he into the first bedroom. PO Celestin then yelled at \$\sin^{2/(b)}\$ and \$\sin^{2/(c)(b)}\$ about getting into \$\sin^{2/(c)(b)}\$ room, though \$\sin^{2/(c)(b)}\$ and \$\sin^{2/(c)(b)}\$ were already in the room at the time. PO Celestin said he would arrest her but did not specify why. PO Celestin told \$\sin^{2/(c)(b)}\$ something to the effect of, "Keep your mother in the roomif she don't want to be arrested," or "Make sure you stand in the room, or I will cuff you." None of the officers threatened
to arrest anyone else. In his CCRB statement, \$87(2)(6) stated that after officers entered the apartment, he did
not see anyone place their hands on \$87(2)(b) but an officer, identified as PO Malfetano by the

investigation, "bumped into" her as he tried to move past her, and his arm made contact with her





CCRB Case # 202203603

	n three other CCRB complain	en a member of service for five yearnts and seven other allegations, one	
0 2	202003128 involved a substa	ntiated allegation of a discourteous nended Command Discipline A and	
§ 87(2)(g), § 87((4-b)		
	§ 87(2)(g)		
subject is		een a member of service for two yes t and nine other allegations, none o	
subject is		een a member of service for five yes and 30 other allegations, none of	
subject i		n a member of service for four year s and 10 other allegations, none of	
subject is		n a member of service for two years t and three other allegations, none of	
	Mediation	n, Civil and Criminal Histories	
As of Ma of Claim		ion. City Office of the Comptroller has incident (Board Review 26).	s no record of a Notice
Squad: 16			
Investigator:	Nick Venduras Signature	Inv. Nicholas Venduras Print Title & Name	Sept. 18, 2023 Date

Squad Leader:	Patrick Yu	IM Patrick Yu	09/18/2023
	Signature	Print Title & Name	Date
Reviewer:			
_	Signature	Print Title & Name	Date